

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

ANTONIO SULLIVAN,)	No. CV-F-02-6454 REC/SMS HC
)	
)	ORDER DENYING PETITIONER'S
Petitioner,)	REQUEST FOR CERTIFICATE OF
)	APPEALABILITY (Doc. 49)
vs.)	
)	
MIKE YARBOROUGH,)	
)	
)	
Respondent.)	
)	
)	

On November 16, 2005, the Order denying petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 was filed. Judgment for respondent was entered on November 16, 2005.

On August 22, 2006, petitioner filed a Notice of Appeal and a Request for a Certificate of Appealability.

In this Notice of Appeal, petitioner refers to the "Court's order of July 24, 2005." There is no such Order. By Order filed on July 14, 2005, the petition for writ of habeas corpus was denied. Judgment for respondent was entered on July 14, 2005.

1 On August 10, 2005, petitioner filed a motion for
2 reconsideration, which motion was granted by Order filed on
3 August 22, 2005, vacating the July 14, 2005 judgment and
4 directing the Clerk to re-serve the findings and recommendation.
5 Thereafter, as noted, the petition for writ of habeas corpus was
6 denied and judgment for respondent entered on November 16, 2005.
7 Therefore, the court assumes that petitioner's Notice of Appeal
8 and Request for Certificate of Appealability refers to the
9 November 16, 2005 Order denying the petition for writ of habeas
10 corpus and the judgment for respondent entered on that date.

11 Petitioner's Notice of Appeal is untimely. Pursuant to Rule
12 4(a)(1)(A), Federal Rules of Appellate Procedure, the Notice of
13 Appeal should have been filed within 30 days of entry of
14 judgment. Petitioner is not entitled to an extension of time to
15 file the Notice of Appeal pursuant to Rule 4(a)(5) because the
16 Notice of Appeal was filed more than 30 days the time set forth
17 in Rule 4(a)(1)(A). Petitioner is not entitled to re-open the
18 time to file the Notice of Appeal pursuant to Rule 4(a)(6). The
19 record establishes that petitioner was served with the November
20 16, 2005 Order and the Entry of Judgment on November 16, 2005 and
21 that service of these documents was not returned to the court.
22 Furthermore, petitioner's Notice of Appeal and Request for
23 Certificate of Appealability was not filed until more than 180
24 days after the entry of judgment on November 16, 2005.

25 Because the Notice of Appeal is untimely, there is no basis
26 for issuance of the Certificate of Appealability. Accordingly,

1 petitioner's Request for a Certificate of Appealability is
2 denied.

3 IT IS SO ORDERED.

4 **Dated: August 28, 2006**
668554

/s/ Robert E. Coyle
UNITED STATES DISTRICT JUDGE